IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13059 of 2004

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANJAYKUMAR NAVINCHANDRA SHAH - Petitioner(s)
Versus
AMITKUMAR RAMESHBHAI MISTRI - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1,MRS RANJAN B PATEL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 12/07/2006

ORAL JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner challenges the order dated 16.9.2004 passed by the learned Joint Civil Judge (J.D.), Mehsana, below Exh. 16 in Regular Civil Suit No. 214 of 2003, whereby the

petitioner's application seeking permission to present a written statement in his defence has been rejected.

2. Heard Mr. Chirag Patel, learned advocate on behalf of Mr. B.S. Patel. Though served, there is no appearance on behalf of the respondent.

3. Learned advocate for the petitioner has submitted that the learned Judge has rejected his application for filing written statement by placing reliance upon a decision of the Karnataka High Court in the case of *Satyapal & others Vs. Smt. Yashminbanu Ansari & Others* reported in *AIR 2004 Karnataka 246*, wherein, it has been held that a written statement is required to be filed within 30 days of the service of summons and in any case within a maximum period of 60 days, beyond which, the Court has no authority to grant extension. The learned Judge has, following the principle laid down in the said judgment, held that as the provisions of Order-8 Rule-1 are mandatory and the petitioner has filed his written statement beyond the period of one year since the service of summons, it is not possible to grant permission to file the written statement.

4. The learned advocate has submitted that the Apex Court has, in the case of *Kailash Vs. Nanhku and others* reported in *(2005) 4 Supreme Court Cases 480,* held that the provision of Order-8 Rule-1 of the Code of Civil Procedure, being in the domain of

procedural law, is directory and not mandatory; that the power of the Court to extend time for filing the written statement beyond the time schedule provided by Order-8 Rule-1 of the Code of Civil Procedure is not completely taken away. It is submitted that, in the circumstances, the impugned order is required to be quashed and set aside and that the petitioner be permitted to file his written statement.

5. The Apex Court has, in the case of *Kailash Vs. Nanhku and others (supra)*, held as follows :

> "(iv) The purpose of providing the time schedule for filing the written statement under Order 8, Rule 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of Order 8 of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order 8, Rule 1 of the CPC is not completely taken away.

(v) Though Order 8, Rule 1 of the CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

6. As can be seen from the impugned order, the learned Judge has rejected the application mainly on

the ground that the provisions of Order-8 Rule 1 are mandatory and the Court has no authority to extend the time limit. Considering the principles laid down in aforesaid decision of the Hon'ble Supreme Court, it is deemed fit to set aside the impugned order and to remand the matter for deciding the same afresh.

7. In the result, the petition succeeds and is allowed to the aforesaid extent. The impugned order dated 16.9.2004 passed by the learned Joint Civil Judge (J.D.), Mehsana below Exh. 16 in Regular Civil Suit No. 214 of 2003 is hereby quashed and set aside. The application Exh. 16 is restored to file. The learned Joint Civil Judge (J.D.), Mehsana shall hear the matter afresh and consider the application in the light of the aforesaid principles laid down by the Supreme Court in the aforesaid decision. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

Sd/-

(HARSHA DEVANI, J.)

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